

INTERIOR BOARD OF INDIAN APPEALS

Estate of Lonnie Kay Jurgens

53 IBIA 23 (02/04/2011)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS INTERIOR BOARD OF INDIAN APPEALS 801 NORTH QUINCY STREET SUITE 300 ARLINGTON, VA 22203

ESTATE OF LONNIE KAY JURGENS,)	Order Docketing and Dismissing Appeal,
	and Referring Matter to the Probate
	Hearings Division
)	·
	Docket No. IBIA 11-055
	February 4, 2011

Carol Hugo (Appellant) appealed to the Board of Indian Appeals (Board), from a January 21, 2011, Decision (Decision), issued by Indian Probate Judge (IPJ) Ange Aunko Hamilton in the estate of Lonnie Kay Jurgens (Decedent), deceased Winnebago Tribe of Nebraska (Tribe) Indian, Probate No. P000084027IP.¹ A "NOTICE TO ALL PERSONS HAVING OR CLAIMING AN INTEREST IN THE SUBJECT MATTER OF THIS PROCEEDING" (Notice), which accompanied the Decision, stated that the Decision would become final 30 days later unless, within that time period, a notice of appeal was filed with the Board.² Consistent with the Notice, Appellant sought review of the Decision by filing an appeal with the Board.

We dismiss this appeal as premature. The Notice provided incorrect instructions for seeking review of the Decision. Contrary to those instructions, a request for review of the Decision must first be directed to the IPJ through a petition for rehearing. *See* 43 C.F.R. \$ 30.237. Therefore, we refer Appellant's appeal to the Probate Hearings Division for consideration as a petition for rehearing.

¹ The Decision found that the Indian Reorganization Act, *see* 25 U.S.C. § 464, precluded Decedent's non-biological adopted-in siblings, including Appellant, from receiving an interest in Decedent's Indian trust or restricted real property because the property is under the Tribe's jurisdiction and they are not enrolled in the Tribe. Appellant contends that she is enrolled in the Tribe.

² Upon receipt of Appellant's appeal, the Board's staff contacted the IPJ's office and obtained a copy of the Notice.

The jurisdiction of the Board in probate matters is set forth in 43 C.F.R. § 4.320, which limits the Board's review to appeals from orders on petitions for rehearing, petitions for reopening, purchases of interests in decedents' trust estates, and inventory modification orders. As relevant to the Decision in this case, "any legal and/or factual errors and omissions as well as any newly discovered evidence first must be presented to the [IPJ through a petition for rehearing] before an appeal to the Board will be ripe for review." Estate of Phillip Lorraine Post, 44 IBIA 108, 109 (2007); see Estate of Frank Andrew Spencer, 39 IBIA 190 (2003).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dockets but dismisses this appeal for lack of jurisdiction. We refer Appellant's appeal to the Probate Hearings Division for consideration as a petition for rehearing.³

	I concur:	
// original signed	// original signed	
Steven K. Linscheid	Debora G. Luther	
Chief Administrative Judge	Administrative Judge	

³ If Appellant is aggrieved by an order on rehearing, she may then appeal that order to the Board pursuant to 43 C.F.R. §§ 4.320 - 4.323.